

AMENDMENT TO
OFFERED BY M____.

Title XII is amended to read as follows:

1 **TITLE XII—ELECTRICITY**

2 **SEC. 1201. SHORT TITLE.**

3 This title may be cited as the “Electric Reliability
4 Act of 2005”.

5 **Subtitle A—Reliability Standards**

6 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C 824 et seq.) is amended by adding at the end
9 the following:

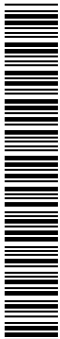
10 **“SEC. 215. ELECTRIC RELIABILITY.**

11 “(a) DEFINITIONS.—For purposes of this section:

12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
14 essary for operating an interconnected electric
15 energy transmission network (or any portion
16 thereof); and

17 “(B) electric energy from generation facili-
18 ties needed to maintain transmission system re-
19 liability.

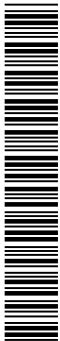


1 The term does not include facilities used in the local
2 distribution of electric energy.

3 “(2) The terms ‘Electric Reliability Organiza-
4 tion’ and ‘ERO’ mean the organization certified by
5 the Commission under subsection (c) the purpose of
6 which is to establish and enforce reliability stand-
7 ards for the bulk-power system, subject to Commis-
8 sion review.

9 “(3) The term ‘reliability standard’ means a re-
10 quirement, approved by the Commission under this
11 section, to provide for reliable operation of the bulk-
12 power system. The term includes requirements for
13 the operation of existing bulk-power system facilities
14 and the design of planned additions or modifications
15 to such facilities to the extent necessary to provide
16 for reliable operation of the bulk-power system, but
17 the term does not include any requirement to en-
18 large such facilities or to construct new transmission
19 capacity or generation capacity.

20 “(4) The term ‘reliable operation’ means oper-
21 ating the elements of the bulk-power system within
22 equipment and electric system thermal, voltage, and
23 stability limits so that instability, uncontrolled sepa-
24 ration, or cascading failures of such system will not



1 occur as a result of a sudden disturbance or unan-
2 ticipated failure of system elements.

3 “(5) The term ‘Interconnection’ means a geo-
4 graphic area in which the operation of bulk-power
5 system components is synchronized such that the
6 failure of 1 or more of such components may ad-
7 versely affect the ability of the operators of other
8 components within the system to maintain reliable
9 operation of the facilities within their control.

10 “(6) The term ‘transmission organization’
11 means a Regional Transmission Organization, Inde-
12 pendent System Operator, independent transmission
13 provider, or other transmission organization finally
14 approved by the Commission for the operation of
15 transmission facilities.

16 “(7) The term ‘regional entity’ means an entity
17 having enforcement authority pursuant to subsection
18 (e)(4).

19 “(b) JURISDICTION AND APPLICABILITY.—(1) The
20 Commission shall have jurisdiction, within the United
21 States, over the ERO certified by the Commission under
22 subsection (c), any regional entities, and all users, owners
23 and operators of the bulk-power system, including but not
24 limited to the entities described in section 201(f), for pur-
25 poses of approving reliability standards established under



1 this section and enforcing compliance with this section. All
2 users, owners and operators of the bulk-power system
3 shall comply with reliability standards that take effect
4 under this section.

5 “(2) The Commission shall issue a final rule to imple-
6 ment the requirements of this section not later than 180
7 days after the date of enactment of this section.

8 “(c) CERTIFICATION.—Following the issuance of a
9 Commission rule under subsection (b)(2), any person may
10 submit an application to the Commission for certification
11 as the Electric Reliability Organization. The Commission
12 may certify 1 such ERO if the Commission determines
13 that such ERO—

14 “(1) has the ability to develop and enforce, sub-
15 ject to subsection (e)(2), reliability standards that
16 provide for an adequate level of reliability of the
17 bulk-power system; and

18 “(2) has established rules that—

19 “(A) assure its independence of the users
20 and owners and operators of the bulk-power
21 system, while assuring fair stakeholder rep-
22 resentation in the selection of its directors and
23 balanced decisionmaking in any ERO com-
24 mittee or subordinate organizational structure;



1 “(B) allocate equitably reasonable dues,
2 fees, and other charges among end users for all
3 activities under this section;

4 “(C) provide fair and impartial procedures
5 for enforcement of reliability standards through
6 the imposition of penalties in accordance with
7 subsection (e) (including limitations on activi-
8 ties, functions, or operations, or other appro-
9 priate sanctions);

10 “(D) provide for reasonable notice and op-
11 portunity for public comment, due process,
12 openness, and balance of interests in developing
13 reliability standards and otherwise exercising its
14 duties; and

15 “(E) provide for taking, after certification,
16 appropriate steps to gain recognition in Canada
17 and Mexico.

18 “(d) RELIABILITY STANDARDS.—(1) The Electric
19 Reliability Organization shall file each reliability standard
20 or modification to a reliability standard that it proposes
21 to be made effective under this section with the Commis-
22 sion.

23 “(2) The Commission may approve, by rule or order,
24 a proposed reliability standard or modification to a reli-
25 ability standard if it determines that the standard is just,

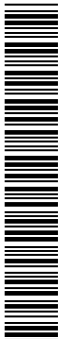


1 reasonable, not unduly discriminatory or preferential, and
2 in the public interest. The Commission shall give due
3 weight to the technical expertise of the Electric Reliability
4 Organization with respect to the content of a proposed
5 standard or modification to a reliability standard and to
6 the technical expertise of a regional entity organized on
7 an Interconnection-wide basis with respect to a reliability
8 standard to be applicable within that Interconnection, but
9 shall not defer with respect to the effect of a standard
10 on competition. A proposed standard or modification shall
11 take effect upon approval by the Commission.

12 “(3) The Electric Reliability Organization shall
13 rebuttably presume that a proposal from a regional entity
14 organized on an Interconnection-wide basis for a reliability
15 standard or modification to a reliability standard to be ap-
16 plicable on an Interconnection-wide basis is just, reason-
17 able, and not unduly discriminatory or preferential, and
18 in the public interest.

19 “(4) The Commission shall remand to the Electric
20 Reliability Organization for further consideration a pro-
21 posed reliability standard or a modification to a reliability
22 standard that the Commission disapproves in whole or in
23 part.

24 “(5) The Commission, upon its own motion or upon
25 complaint, may order the Electric Reliability Organization



1 to submit to the Commission a proposed reliability stand-
2 ard or a modification to a reliability standard that ad-
3 dresses a specific matter if the Commission considers such
4 a new or modified reliability standard appropriate to carry
5 out this section.

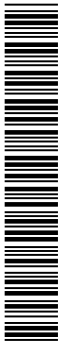
6 “(6) The final rule adopted under subsection (b)(2)
7 shall include fair processes for the identification and time-
8 ly resolution of any conflict between a reliability standard
9 and any function, rule, order, tariff, rate schedule, or
10 agreement accepted, approved, or ordered by the Commis-
11 sion applicable to a transmission organization. Such trans-
12 mission organization shall continue to comply with such
13 function, rule, order, tariff, rate schedule or agreement ac-
14 cepted approved, or ordered by the Commission until—

15 “(A) the Commission finds a conflict exists be-
16 tween a reliability standard and any such provision;

17 “(B) the Commission orders a change to such
18 provision pursuant to section 206 of this part; and

19 “(C) the ordered change becomes effective
20 under this part.

21 If the Commission determines that a reliability standard
22 needs to be changed as a result of such a conflict, it shall
23 order the ERO to develop and file with the Commission
24 a modified reliability standard under paragraph (4) or (5)
25 of this subsection.



1 “(e) ENFORCEMENT.—(1) The ERO may impose,
2 subject to paragraph (2), a penalty on a user or owner
3 or operator of the bulk-power system for a violation of a
4 reliability standard approved by the Commission under
5 subsection (d) if the ERO, after notice and an opportunity
6 for a hearing—

7 “(A) finds that the user or owner or operator
8 has violated a reliability standard approved by the
9 Commission under subsection (d); and

10 “(B) files notice and the record of the pro-
11 ceeding with the Commission.

12 “(2) A penalty imposed under paragraph (1) may
13 take effect not earlier than the 31st day after the ERO
14 files with the Commission notice of the penalty and the
15 record of proceedings. Such penalty shall be subject to re-
16 view by the Commission, on its own motion or upon appli-
17 cation by the user, owner or operator that is the subject
18 of the penalty filed within 30 days after the date such
19 notice is filed with the Commission. Application to the
20 Commission for review, or the initiation of review by the
21 Commission on its own motion, shall not operate as a stay
22 of such penalty unless the Commission otherwise orders
23 upon its own motion or upon application by the user,
24 owner or operator that is the subject of such penalty. In
25 any proceeding to review a penalty imposed under para-



1 graph (1), the Commission, after notice and opportunity
2 for hearing (which hearing may consist solely of the record
3 before the ERO and opportunity for the presentation of
4 supporting reasons to affirm, modify, or set aside the pen-
5 alty), shall by order affirm, set aside, reinstate, or modify
6 the penalty, and, if appropriate, remand to the ERO for
7 further proceedings. The Commission shall implement ex-
8 pedited procedures for such hearings.

9 “(3) On its own motion or upon complaint, the Com-
10 mission may order compliance with a reliability standard
11 and may impose a penalty against a user or owner or oper-
12 ator of the bulk-power system if the Commission finds,
13 after notice and opportunity for a hearing, that the user
14 or owner or operator of the bulk-power system has en-
15 gaged or is about to engage in any acts or practices that
16 constitute or will constitute a violation of a reliability
17 standard.

18 “(4) The Commission shall issue regulations author-
19 izing the ERO to enter into an agreement to delegate au-
20 thority to a regional entity for the purpose of proposing
21 reliability standards to the ERO and enforcing reliability
22 standards under paragraph (1) if—

23 “(A) the regional entity is governed by—

24 “(i) an independent board;

25 “(ii) a balanced stakeholder board; or



1 “(iii) a combination independent and bal-
2 anced stakeholder board.

3 “(B) the regional entity otherwise satisfies the
4 provisions of subsection (c)(1) and (2); and

5 “(C) the agreement promotes effective and effi-
6 cient administration of bulk-power system reliability.

7 The Commission may modify such delegation. The ERO
8 and the Commission shall rebuttably presume that a pro-
9 posal for delegation to a regional entity organized on an
10 Interconnection-wide basis promotes effective and efficient
11 administration of bulk-power system reliability and should
12 be approved. Such regulation may provide that the Com-
13 mission may assign the ERO’s authority to enforce reli-
14 ability standards under paragraph (1) directly to a re-
15 gional entity consistent with the requirements of this para-
16 graph.

17 “(5) The Commission may take such action as is nec-
18 essary or appropriate against the ERO or a regional entity
19 to ensure compliance with a reliability standard or any
20 Commission order affecting the ERO or a regional entity.

21 “(6) Any penalty imposed under this section shall
22 bear a reasonable relation to the seriousness of the viola-
23 tion and shall take into consideration the efforts of such
24 user, owner, or operator to remedy the violation in a time-
25 ly manner.



1 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
2 TION RULES.—The Electric Reliability Organization shall
3 file with the Commission for approval any proposed rule
4 or proposed rule change, accompanied by an explanation
5 of its basis and purpose. The Commission, upon its own
6 motion or complaint, may propose a change to the rules
7 of the ERO. A proposed rule or proposed rule change shall
8 take effect upon a finding by the Commission, after notice
9 and opportunity for comment, that the change is just, rea-
10 sonable, not unduly discriminatory or preferential, is in
11 the public interest, and satisfies the requirements of sub-
12 section (c).

13 “(g) RELIABILITY REPORTS.—The ERO shall con-
14 duct periodic assessments of the reliability and adequacy
15 of the bulk-power system in North America.

16 “(h) COORDINATION WITH CANADA AND MEXICO.—
17 The President is urged to negotiate international agree-
18 ments with the governments of Canada and Mexico to pro-
19 vide for effective compliance with reliability standards and
20 the effectiveness of the ERO in the United States and
21 Canada or Mexico.

22 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
23 authority to develop and enforce compliance with reli-
24 ability standards for only the bulk-power system.



1 “(2) This section does not authorize the ERO or the
2 Commission to order the construction of additional gen-
3 eration or transmission capacity or to set and enforce com-
4 pliance with standards for adequacy or safety of electric
5 facilities or services.

6 “(3) Nothing in this section shall be construed to pre-
7 empt any authority of any State to take action to ensure
8 the safety, adequacy, and reliability of electric service
9 within that State, as long as such action is not incon-
10 sistent with any reliability standard.

11 “(4) Within 90 days of the application of the Electric
12 Reliability Organization or other affected party, and after
13 notice and opportunity for comment, the Commission shall
14 issue a final order determining whether a State action is
15 inconsistent with a reliability standard, taking into consid-
16 eration any recommendation of the ERO.

17 “(5) The Commission, after consultation with the
18 ERO and the State taking action, may stay the effective-
19 ness of any State action, pending the Commission’s
20 issuance of a final order.

21 “(j) REGIONAL ADVISORY BODIES.—The Commis-
22 sion shall establish a regional advisory body on the petition
23 of at least $\frac{2}{3}$ of the States within a region that have more
24 than $\frac{1}{2}$ of their electric load served within the region. A
25 regional advisory body shall be composed of 1 member



1 from each participating State in the region, appointed by
2 the Governor of each State, and may include representa-
3 tives of agencies, States, and provinces outside the United
4 States. A regional advisory body may provide advice to the
5 Electric Reliability Organization, a regional entity, or the
6 Commission regarding the governance of an existing or
7 proposed regional entity within the same region, whether
8 a standard proposed to apply within the region is just,
9 reasonable, not unduly discriminatory or preferential, and
10 in the public interest, whether fees proposed to be assessed
11 within the region are just, reasonable, not unduly discrimi-
12 natory or preferential, and in the public interest and any
13 other responsibilities requested by the Commission. The
14 Commission may give deference to the advice of any such
15 regional advisory body if that body is organized on an
16 Interconnection-wide basis.

17 “(k) ALASKA AND HAWAII.—The provisions of this
18 section do not apply to Alaska or Hawaii.”.

19 (b) STATUS OF ERO.—The Electric Reliability Orga-
20 nization certified by the Federal Energy Regulatory Com-
21 mission under section 215(c) of the Federal Power Act
22 and any regional entity delegated enforcement authority
23 pursuant to section 215(e)(4) of that Act are not depart-
24 ments, agencies, or instrumentalities of the United States
25 Government.



1 **Subtitle B—Transmission**
2 **Operation Improvements**

3 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

4 Part II of the Federal Power Act (16 U.S.C. 824 et
5 seq.) is amended by inserting after section 211 the fol-
6 lowing new section:

7 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
8 **TING UTILITIES.**

9 “(a) TRANSMISSION SERVICES.—Subject to section
10 212(h), the Commission may, by rule or order, require an
11 unregulated transmitting utility to provide transmission
12 services—

13 “(1) at rates that are comparable to those that
14 the unregulated transmitting utility charges itself;
15 and

16 “(2) on terms and conditions (not relating to
17 rates) that are comparable to those under which
18 such unregulated transmitting utility provides trans-
19 mission services to itself and that are not unduly
20 discriminatory or preferential.

21 “(b) EXEMPTION.—The Commission shall exempt
22 from any rule or order under this section any unregulated
23 transmitting utility that—

24 “(1) sells no more than 4,000,000 megawatt
25 hours of electricity per year; or



1 “(2) does not own or operate any transmission
2 facilities that are necessary for operating an inter-
3 connected transmission system (or any portion
4 thereof); or

5 “(3) meets other criteria the Commission deter-
6 mines to be in the public interest.

7 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
8 quirements of subsection (a) shall not apply to facilities
9 used in local distribution.

10 “(d) EXEMPTION TERMINATION.—Whenever the
11 Commission, after an evidentiary hearing held upon a
12 complaint and after giving consideration to reliability
13 standards established under section 215, finds on the
14 basis of a preponderance of the evidence that any exemp-
15 tion granted pursuant to subsection (b) unreasonably im-
16 pairs the continued reliability of an interconnected trans-
17 mission system, it shall revoke the exemption granted to
18 that transmitting utility.

19 “(e) APPLICATION TO UNREGULATED TRANSMIT-
20 TING UTILITIES.—The rate changing procedures applica-
21 ble to public utilities under subsections (c) and (d) of sec-
22 tion 205 are applicable to unregulated transmitting utili-
23 ties for purposes of this section.

24 “(f) REMAND.—In exercising its authority under
25 paragraph (1) of subsection (a), the Commission may re-



1 mand transmission rates to an unregulated transmitting
2 utility for review and revision where necessary to meet the
3 requirements of subsection (a).

4 “(g) OTHER REQUESTS.—The provision of trans-
5 mission services under subsection (a) does not preclude a
6 request for transmission services under section 211.

7 “(h) LIMITATION.—The Commission may not require
8 a State or municipality to take action under this section
9 that would violate a private activity bond rule for purposes
10 of section 141 of the Internal Revenue Code of 1986 (26
11 U.S.C. 141).

12 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
13 CILITIES.—Nothing in this section authorizes the Commis-
14 sion to require an unregulated transmitting utility to
15 transfer control or operational control of its transmitting
16 facilities to an RTO or any other Commission-approved
17 independent transmission organization designated to pro-
18 vide nondiscriminatory transmission access.

19 “(j) DEFINITION.—For purposes of this section, the
20 term ‘unregulated transmitting utility’ means an entity
21 that—

22 “(1) owns or operates facilities used for the
23 transmission of electric energy in interstate com-
24 merce; and

25 “(2) is an entity described in section 201(f).”.



1 **SEC. 1232. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
2 **TRANSMISSION ORGANIZATIONS.**

3 (a) DEFINITIONS.—For purposes of this section—

4 (1) APPROPRIATE FEDERAL REGULATORY AU-
5 THORITY.—The term “appropriate Federal regu-
6 latory authority” means—

7 (A) with respect to a Federal power mar-
8 keting agency (as defined in the Federal Power
9 Act), the Secretary of Energy, except that the
10 Secretary may designate the Administrator of a
11 Federal power marketing agency to act as the
12 appropriate Federal regulatory authority with
13 respect to the transmission system of that Fed-
14 eral power marketing agency; and

15 (B) with respect to the Tennessee Valley
16 Authority, the Board of Directors of the Ten-
17 nessee Valley Authority.

18 (2) FEDERAL UTILITY.—The term “Federal
19 utility” means a Federal power marketing agency or
20 the Tennessee Valley Authority.

21 (3) TRANSMISSION SYSTEM.—The term “trans-
22 mission system” means electric transmission facili-
23 ties owned, leased, or contracted for by the United
24 States and operated by a Federal utility.

25 (b) TRANSFER.—The appropriate Federal regulatory
26 authority is authorized to enter into a contract, agreement



1 or other arrangement transferring control and use of all
2 or part of the Federal utility's transmission system to an
3 RTO or ISO (as defined in the Federal Power Act), ap-
4 proved by the Federal Energy Regulatory Commission.
5 Such contract, agreement or arrangement shall include—

6 (1) performance standards for operation and
7 use of the transmission system that the head of the
8 Federal utility determines necessary or appropriate,
9 including standards that assure recovery of all the
10 Federal utility's costs and expenses related to the
11 transmission facilities that are the subject of the
12 contract, agreement or other arrangement; consist-
13 ency with existing contracts and third-party financ-
14 ing arrangements; and consistency with said Federal
15 utility's statutory authorities, obligations, and limi-
16 tations;

17 (2) provisions for monitoring and oversight by
18 the Federal utility of the RTO's or ISO's fulfillment
19 of the terms and conditions of the contract, agree-
20 ment or other arrangement, including a provision for
21 the resolution of disputes through arbitration or
22 other means with the regional transmission organi-
23 zation or with other participants, notwithstanding
24 the obligations and limitations of any other law re-
25 garding arbitration; and



1 (3) a provision that allows the Federal utility to
2 withdraw from the RTO or ISO and terminate the
3 contract, agreement or other arrangement in accord-
4 ance with its terms.

5 Neither this section, actions taken pursuant to it, nor any
6 other transaction of a Federal utility using an RTO or
7 ISO shall confer upon the Federal Energy Regulatory
8 Commission jurisdiction or authority over the Federal util-
9 ity's electric generation assets, electric capacity or energy
10 that the Federal utility is authorized by law to market,
11 or the Federal utility's power sales activities.

12 (c) EXISTING STATUTORY AND OTHER OBLIGA-
13 TIONS.—

14 (1) SYSTEM OPERATION REQUIREMENTS.—No
15 statutory provision requiring or authorizing a Fed-
16 eral utility to transmit electric power or to construct,
17 operate or maintain its transmission system shall be
18 construed to prohibit a transfer of control and use
19 of its transmission system pursuant to, and subject
20 to all requirements of subsection (b).

21 (2) OTHER OBLIGATIONS.—This subsection
22 shall not be construed to—

23 (A) suspend, or exempt any Federal utility
24 from, any provision of existing Federal law, in-
25 cluding but not limited to any requirement or



1 direction relating to the use of the Federal util-
2 ity's transmission system, environmental protec-
3 tion, fish and wildlife protection, flood control,
4 navigation, water delivery, or recreation; or

5 (B) authorize abrogation of any contract
6 or treaty obligation.

7 (3) REPEAL.—Section 311 of title III of Appen-
8 dix B of the Act of October 27, 2000 (P.L. 106–
9 377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16
10 U.S.C. 824n) is repealed.

11 **Subtitle C—Amendments to** 12 **PURPA**

13 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

14 (a) ADOPTION OF STANDARDS.—Section 111(d) of
15 the Public Utility Regulatory Policies Act of 1978 (16
16 U.S.C. 2621(d)) is amended by adding at the end the fol-
17 lowing:

18 “(11) NET METERING.—Each electric utility
19 shall make available upon request net metering serv-
20 ice to any electric consumer that the electric utility
21 serves. For purposes of this paragraph, the term
22 ‘net metering service’ means service to an electric
23 consumer under which electric energy generated by
24 that electric consumer from an eligible on-site gener-
25 ating facility and delivered to the local distribution



1 facilities may be used to offset electric energy pro-
2 vided by the electric utility to the electric consumer
3 during the applicable billing period.

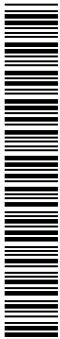
4 “(12) FUEL SOURCES.—Each electric utility
5 shall develop a plan to minimize dependence on 1
6 fuel source and to ensure that the electric energy it
7 sells to consumers is generated using a diverse range
8 of fuels and technologies, including renewable tech-
9 nologies.

10 “(13) FOSSIL FUEL GENERATION EFFI-
11 CIENCY.—Each electric utility shall develop and im-
12 plement a 10-year plan to increase the efficiency of
13 its fossil fuel generation.”.

14 (b) COMPLIANCE.—

15 (1) TIME LIMITATIONS.—Section 112(b) of the
16 Public Utility Regulatory Policies Act of 1978 (16
17 U.S.C. 2622(b)) is amended by adding at the end
18 the following:

19 “(3)(A) Not later than 2 years after the enactment
20 of this paragraph, each State regulatory authority (with
21 respect to each electric utility for which it has ratemaking
22 authority) and each nonregulated electric utility shall com-
23 mence the consideration referred to in section 111, or set
24 a hearing date for such consideration, with respect to each



1 standard established by paragraphs (11) through (13) of
2 section 111(d).

3 “(B) Not later than 3 years after the date of the en-
4 actment of this paragraph, each State regulatory authority
5 (with respect to each electric utility for which it has rate-
6 making authority), and each nonregulated electric utility,
7 shall complete the consideration, and shall make the deter-
8 mination, referred to in section 111 with respect to each
9 standard established by paragraphs (11) through (13) of
10 section 111(d).”.

11 (2) FAILURE TO COMPLY.—Section 112(c) of
12 the Public Utility Regulatory Policies Act of 1978
13 (16 U.S.C. 2622(c)) is amended by adding at the
14 end the following:

15 “In the case of each standard established by paragraphs
16 (11) through (13) of section 111(d), the reference con-
17 tained in this subsection to the date of enactment of this
18 Act shall be deemed to be a reference to the date of enact-
19 ment of such paragraphs (11) through (13).”.

20 (3) PRIOR STATE ACTIONS.—

21 (A) IN GENERAL.—Section 112 of the
22 Public Utility Regulatory Policies Act of 1978
23 (16 U.S.C. 2622) is amended by adding at the
24 end the following:



1 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
2 (c) of this section shall not apply to the standards estab-
3 lished by paragraphs (11) through (13) of section 111(d)
4 in the case of any electric utility in a State if, before the
5 enactment of this subsection—

6 “(1) the State has implemented for such utility
7 the standard concerned (or a comparable standard);

8 “(2) the State regulatory authority for such
9 State or relevant nonregulated electric utility has
10 conducted a proceeding to consider implementation
11 of the standard concerned (or a comparable stand-
12 ard) for such utility; or

13 “(3) the State legislature has voted on the im-
14 plementation of such standard (or a comparable
15 standard) for such utility.”.

16 (B) CROSS REFERENCE.—Section 124 of
17 such Act (16 U.S.C. 2634) is amended by add-
18 ing the following at the end thereof: “In the
19 case of each standard established by paragraphs
20 (11) through (13) of section 111(d), the ref-
21 erence contained in this subsection to the date
22 of enactment of this Act shall be deemed to be
23 a reference to the date of enactment of such
24 paragraphs (11) through (13).”.



1 **SEC. 1252. SMART METERING.**

2 (a) IN GENERAL.—Section 111(d) of the Public Utili-
3 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
4 is amended by adding at the end the following:

5 “(14) TIME-BASED METERING AND COMMU-
6 NICATIONS.—

7 “(A) Not later than 18 months after the
8 date of enactment of this paragraph, each elec-
9 tric utility shall offer each of its customer class-
10 es, and provide individual customers upon cus-
11 tomer request, a time-based rate schedule under
12 which the rate charged by the electric utility
13 varies during different time periods and reflects
14 the variance, if any, in the utility’s costs of gen-
15 erating and purchasing electricity at the whole-
16 sale level. The time-based rate schedule shall
17 enable the electric consumer to manage energy
18 use and cost through advanced metering and
19 communications technology.

20 “(B) The types of time-based rate sched-
21 ules that may be offered under the schedule re-
22 ferred to in subparagraph (A) include, among
23 others—

24 “(i) time-of-use pricing whereby elec-
25 tricity prices are set for a specific time pe-
26 riod on an advance or forward basis, typi-



1 cally not changing more often than twice a
2 year, based on the utility's cost of gener-
3 ating and/or purchasing such electricity at
4 the wholesale level for the benefit of the
5 consumer. Prices paid for energy consumed
6 during these periods shall be pre-estab-
7 lished and known to consumers in advance
8 of such consumption, allowing them to
9 vary their demand and usage in response
10 to such prices and manage their energy
11 costs by shifting usage to a lower cost pe-
12 riod or reducing their consumption overall;

13 “(ii) critical peak pricing whereby
14 time-of-use prices are in effect except for
15 certain peak days, when prices may reflect
16 the costs of generating and/or purchasing
17 electricity at the wholesale level and when
18 consumers may receive additional discounts
19 for reducing peak period energy consump-
20 tion; and

21 “(iii) real-time pricing whereby elec-
22 tricity prices are set for a specific time pe-
23 riod on an advanced or forward basis, re-
24 flecting the utility's cost of generating and/



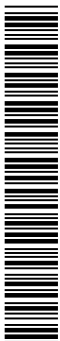
1 or purchasing electricity at the wholesale
2 level, and may change as often as hourly.

3 “(C) Each electric utility subject to sub-
4 paragraph (A) shall provide each customer re-
5 questing a time-based rate with a time-based
6 meter capable of enabling the utility and cus-
7 tomer to offer and receive such rate, respec-
8 tively.

9 “(D) For purposes of implementing this
10 paragraph, any reference contained in this sec-
11 tion to the date of enactment of the Public Util-
12 ity Regulatory Policies Act of 1978 shall be
13 deemed to be a reference to the date of enact-
14 ment of this paragraph.

15 “(E) In a State that permits third-party
16 marketers to sell electric energy to retail elec-
17 tric consumers, such consumers shall be entitled
18 to receive the same time-based metering and
19 communications device and service as a retail
20 electric consumer of the electric utility.

21 “(F) Notwithstanding subsections (b) and
22 (c) of section 112, each State regulatory au-
23 thority shall, not later than 18 months after the
24 date of enactment of this paragraph conduct an
25 investigation in accordance with section 115(i)



1 and issue a decision whether it is appropriate to
2 implement the standards set out in subpara-
3 graphs (A) and (C).”.

4 (b) STATE INVESTIGATION OF DEMAND RESPONSE
5 AND TIME-BASED METERING.—Section 115 of the Public
6 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
7 is amended as follows:

8 (1) By inserting in subsection (b) after the
9 phrase “the standard for time-of-day rates estab-
10 lished by section 111(d)(3)” the following: “and the
11 standard for time-based metering and communica-
12 tions established by section 111(d)(14)”.

13 (2) By inserting in subsection (b) after the
14 phrase “are likely to exceed the metering” the fol-
15 lowing: “and communications”.

16 (3) By adding the at the end the following:
17 “(i) TIME-BASED METERING AND COMMUNICA-
18 TIONS.—In making a determination with respect to the
19 standard established by section 111(d)(14), the investiga-
20 tion requirement of section 111(d)(14)(F) shall be as fol-
21 lows: Each State regulatory authority shall conduct an in-
22 vestigation and issue a decision whether or not it is appro-
23 priate for electric utilities to provide and install time-based
24 meters and communications devices for each of their cus-
25 tomers which enable such customers to participate in time-



1 based pricing rate schedules and other demand response
2 programs.”.

3 (c) FEDERAL ASSISTANCE ON DEMAND RE-
4 SPONSE.—Section 132(a) of the Public Utility Regulatory
5 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
6 striking “and” at the end of paragraph (3), striking the
7 period at the end of paragraph (4) and inserting “; and”,
8 and by adding the following at the end thereof:

9 “(5) technologies, techniques, and rate-making
10 methods related to advanced metering and commu-
11 nications and the use of these technologies, tech-
12 niques and methods in demand response programs.”.

13 (d) FEDERAL GUIDANCE.—Section 132 of the Public
14 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
15 is amended by adding the following at the end thereof:

16 “(d) DEMAND RESPONSE.—The Secretary shall be
17 responsible for—

18 “(1) educating consumers on the availability,
19 advantages, and benefits of advanced metering and
20 communications technologies, including the funding
21 of demonstration or pilot projects;

22 “(2) working with States, utilities, other energy
23 providers and advanced metering and communica-
24 tions experts to identify and address barriers to the
25 adoption of demand response programs; and



1 “(3) not later than 180 days after the date of
2 enactment of the Energy Policy Act of 2005, pro-
3 viding Congress with a report that identifies and
4 quantifies the national benefits of demand response
5 and makes a recommendation on achieving specific
6 levels of such benefits by January 1, 2007.”.

7 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
8 TION.—

9 (1) IN GENERAL.—It is the policy of the United
10 States to encourage States to coordinate, on a re-
11 gional basis, State energy policies to provide reliable
12 and affordable demand response services to the pub-
13 lic.

14 (2) TECHNICAL ASSISTANCE.—The Secretary of
15 Energy shall provide technical assistance to States
16 and regional organizations formed by 2 or more
17 States to assist them in—

18 (A) identifying the areas with the greatest
19 demand response potential;

20 (B) identifying and resolving problems in
21 transmission and distribution networks, includ-
22 ing through the use of demand response;

23 (C) developing plans and programs to use
24 demand response to respond to peak demand or
25 emergency needs; and



1 (D) identifying specific measures con-
2 sumers can take to participate in these demand
3 response programs.

4 (3) REPORT.—Not later than 1 year after the
5 date of enactment of the Energy Policy Act of 2005,
6 the Commission shall prepare and publish an annual
7 report, by appropriate region, that assesses demand
8 response resources, including those available from all
9 consumer classes, and which identifies and reviews—

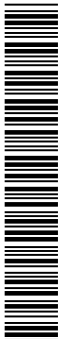
10 (A) saturation and penetration rate of ad-
11 vanced meters and communications tech-
12 nologies, devices and systems;

13 (B) existing demand response programs
14 and time-based rate programs;

15 (C) the annual resource contribution of de-
16 mand resources;

17 (D) the potential for demand response as
18 a quantifiable, reliable resource for regional
19 planning purposes; and

20 (E) steps taken to ensure that, in regional
21 transmission planning and operations, demand
22 resources are provided equitable treatment as a
23 quantifiable, reliable resource relative to the re-
24 source obligations of any load-serving entity,
25 transmission provider, or transmitting party.



1 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
2 SPONSE DEVICES.—It is the policy of the United States
3 that time-based pricing and other forms of demand re-
4 sponse, whereby electricity customers are provided with
5 electricity price signals and the ability to benefit by re-
6 sponding to them, shall be encouraged, and the deploy-
7 ment of such technology and devices that enable electricity
8 customers to participate in such pricing and demand re-
9 sponse systems shall be facilitated. It is further the policy
10 of the United States that the benefits of such demand re-
11 sponse that accrue to those not deploying such technology
12 and devices, but who are part of the same regional elec-
13 tricity entity, shall be recognized.

14 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
15 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
16 2622(b)) is amended by adding at the end the following:

17 “(4)(A) Not later than 1 year after the enact-
18 ment of this paragraph, each State regulatory au-
19 thority (with respect to each electric utility for which
20 it has ratemaking authority) and each nonregulated
21 electric utility shall commence the consideration re-
22 ferred to in section 111, or set a hearing date for
23 such consideration, with respect to the standard es-
24 tablished by paragraph (14) of section 111(d).



1 “(B) Not later than 2 years after the date of
2 the enactment of this paragraph, each State regu-
3 latory authority (with respect to each electric utility
4 for which it has ratemaking authority), and each
5 nonregulated electric utility, shall complete the con-
6 sideration, and shall make the determination, re-
7 ferred to in section 111 with respect to the standard
8 established by paragraph (14) of section 111(d).”.

9 (h) FAILURE TO COMPLY.—Section 112(c) of the
10 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
11 2622(c)) is amended by adding at the end the following:
12 “In the case of the standard established by paragraph (14)
13 of section 111(d), the reference contained in this sub-
14 section to the date of enactment of this Act shall be
15 deemed to be a reference to the date of enactment of such
16 paragraph (14).”.

17 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
18 TERING STANDARDS.—

19 (1) IN GENERAL.—Section 112 of the Public
20 Utility Regulatory Policies Act of 1978 (16 U.S.C.
21 2622) is amended by adding at the end the fol-
22 lowing:

23 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
24 (c) of this section shall not apply to the standard estab-
25 lished by paragraph (14) of section 111(d) in the case of



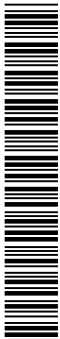
1 any electric utility in a State if, before the enactment of
2 this subsection—

3 “(1) the State has implemented for such utility
4 the standard concerned (or a comparable standard);

5 “(2) the State regulatory authority for such
6 State or relevant nonregulated electric utility has
7 conducted a proceeding to consider implementation
8 of the standard concerned (or a comparable stand-
9 ard) for such utility within the previous 3 years; or

10 “(3) the State legislature has voted on the im-
11 plementation of such standard (or a comparable
12 standard) for such utility within the previous 3
13 years.”.

14 (2) CROSS REFERENCE.—Section 124 of such
15 Act (16 U.S.C. 2634) is amended by adding the fol-
16 lowing at the end thereof: “In the case of the stand-
17 ard established by paragraph (14) of section 111(d),
18 the reference contained in this subsection to the date
19 of enactment of this Act shall be deemed to be a ref-
20 erence to the date of enactment of such paragraph
21 (14).”.



1 **Subtitle D.—Market Transparency,**
2 **Enforcement, and Consumer**
3 **Protection**

4 **SEC. 1282. MARKET MANIPULATION.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

8 “No person or other entity (including an entity de-
9 scribed in section 201(f)) shall willfully and knowingly re-
10 port any information relating to the price of electricity
11 sold at wholesale or availability of transmission capacity,
12 which information the person or any other entity knew to
13 be false at the time of the reporting, to a Federal agency
14 with intent to fraudulently affect the data being compiled
15 by such Federal agency.

16 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

17 “(a) PROHIBITION.—No person or other entity (in-
18 cluding an entity described in section 201(f)) shall willfully
19 and knowingly enter into any contract or other arrange-
20 ment to execute a ‘round trip trade’ for the purchase or
21 sale of electric energy at wholesale.

22 “(b) DEFINITION.—For the purposes of this section,
23 the term ‘round trip trade’ means a transaction, or com-
24 bination of transactions, in which a person or any other
25 entity—



1 “(1) enters into a contract or other arrange-
2 ment to purchase from, or sell to, any other person
3 or other entity electric energy at wholesale;

4 “(2) simultaneously with entering into the con-
5 tract or arrangement described in paragraph (1), ar-
6 ranges a financially offsetting trade with such other
7 person or entity for the same such electric energy,
8 at the same location, price, quantity and terms so
9 that, collectively, the purchase and sale transactions
10 in themselves result in no financial gain or loss; and

11 “(3) enters into the contract or arrangement
12 with a specific intent to fraudulently affect reported
13 revenues, trading volumes, or prices.”.

14 **SEC. 1283. FRAUDULENT OR MANIPULATIVE PRACTICES.**

15 (a) UNLAWFUL ACTS.—It shall be unlawful for any
16 entity, directly or indirectly, by the use of any means or
17 instrumentality of interstate commerce or of the mails to
18 use or employ, in the transmission of electric energy in
19 interstate commerce, the sale of electric energy at whole-
20 sale in interstate commerce, the transportation of natural
21 gas in interstate commerce, or the sale in interstate com-
22 merce of natural gas for resale for ultimate public con-
23 sumption for domestic, commercial, industrial, or any
24 other use, any fraudulent, manipulative, or deceptive de-
25 vice or contrivance in contravention of such rules and reg-



1 ulations as the Federal Energy Regulatory Commission
2 may prescribe as necessary or appropriate in the public
3 interest.

4 (b) APPLICATION OF FEDERAL POWER ACT TO THIS
5 ACT.—The provisions of section 307 through 309 and 313
6 through 317 of the Federal Power Act shall apply to viola-
7 tions of section 601 of this Act in the same manner and
8 to the same extent as such provisions apply to entities sub-
9 ject to Part II of the Federal Power Act.

10 **SEC. 1284. RULEMAKING ON EXEMPTIONS, WAIVERS, ETC**
11 **UNDER FEDERAL POWER ACT.**

12 Part III of the Federal Power Act is amended by in-
13 serting the following new section after section 319 and by
14 redesignating sections 320 and 321 as sections 321 and
15 322, respectively:

16 **“SEC. 320. CRITERIA FOR CERTAIN EXEMPTIONS, WAIVERS,**
17 **ETC.**

18 “(a) RULE REQUIRED FOR CERTAIN WAIVERS, EX-
19 EMPTIONS, ETC.—Not later than 6 months after the en-
20 actment of this Act, the Commission shall promulgate a
21 rule establishing specific criteria for providing an exemp-
22 tion, waiver, or other reduced or abbreviated form of com-
23 pliance with the requirements of sections 204, 301, 304,
24 and 305 (including any prospective blanket order). Such
25 criteria shall be sufficient to insure that any such action

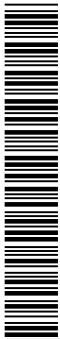


1 taken by the Commission will be consistent with the pur-
2 poses of such requirements and will otherwise protect the
3 public interest.

4 “(b) MORATORIUM ON CERTAIN WAIVERS, EXEMP-
5 TIONS, ETC.—After the date of enactment of this section,
6 the Commission may not issue, adopt, order, approve, or
7 promulgate any exemption, waiver, or other reduced or ab-
8 breviated form of compliance with the requirements of sec-
9 tion 204, 301, 304, or 305 (including any prospective
10 blanket order) until after the rule promulgated under sub-
11 section (a) has taken effect.

12 “(c) PREVIOUS FERC ACTION.—The Commission
13 shall undertake a review, by rule or order, of each exemp-
14 tion, waiver, or other reduced or abbreviated form of com-
15 pliance described in subsection (a) that was taken before
16 the date of enactment of this section. No such action may
17 continue in force and effect after the date 18 months after
18 the date of enactment of this section unless the Commis-
19 sion finds that such action complies with the rule under
20 subsection (a).

21 “(d) EXEMPTION UNDER 204(F) NOT APPLICA-
22 BLE.—For purposes of this section, in applying section
23 204, the provisions of section 204(f) shall not apply.”



1 **SEC. 1285. REPORTING REQUIREMENTS IN ELECTRIC**
2 **POWER SALES AND TRANSMISSION.**

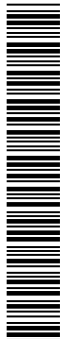
3 (a) **AUDIT TRAILS.**—Section 304 of the Federal
4 Power Act is amended by adding the following new sub-
5 section at the end thereof:

6 “(c)(1) The Commission shall, by rule or order, re-
7 quire each person or other entity engaged in the trans-
8 mission of electric energy in interstate commerce or the
9 sale of electric energy at wholesale in interstate commerce,
10 and each broker, dealer, and power marketer involved in
11 any such transmission or sale, to maintain, and periodi-
12 cally submit to the Commission, such records, in electronic
13 form, of each transaction relating to such transmission or
14 sale as may be necessary to determine whether any person
15 has employed any fraudulent, manipulative, or deceptive
16 device or contrivance in contravention of rules promul-
17 gated by the Commission.

18 “(2) Section 201(f) shall not limit the applica-
19 tion of this subsection.”.

20 (b) **NATURAL GAS.**—Section 8 of the Natural Gas
21 Act is amended by adding the following new subsection
22 at the end thereof:

23 “(d) The Commission shall, by rule or order, require
24 each person or other entity engaged in the transportation
25 of natural gas in interstate commerce, or the sale in inter-
26 state commerce of natural gas for resale for ultimate pub-



1 lie consumption for domestic, commercial, industrial, or
2 any other use, and each broker, dealer, and power mar-
3 keter involved in any such transportation or sale, to main-
4 tain, and periodically submit to the Commission, such
5 records, in electronic form, of each transaction relating to
6 such transmission or sale as may be necessary to deter-
7 mine whether any person has employed any fraudulent,
8 manipulative, or deceptive device or contrivance in con-
9 travention of rules promulgated by the Commission.”.

10 **SEC. 1286. TRANSPARENCY.**

11 (a) DEFINITION.—As used in this section the term
12 “electric power or natural gas information processor”
13 means any person engaged in the business of—

14 (1) collecting, processing, or preparing for dis-
15 tribution or publication, or assisting, participating
16 in, or coordinating the distribution or publication of,
17 information with respect to transactions in or
18 quotations involving the purchase or sale of electric
19 power, natural gas, the transmission of electric en-
20 ergy, or the transportation of natural gas, or

21 (2) distributing or publishing (whether by
22 means of a ticker tape, a communications network,
23 a terminal display device, or otherwise) on a current
24 and continuing basis, information with respect to
25 such transactions or quotations.



1 The term does not include any bona fide newspaper, news
2 magazine, or business or financial publication of general
3 and regular circulation, any self-regulatory organization,
4 any bank, broker, dealer, building and loan, savings and
5 loan, or homestead association, or cooperative bank, if
6 such bank, broker, dealer, association, or cooperative bank
7 would be deemed to be an electric power or natural gas
8 information processor solely by reason of functions per-
9 formed by such institutions as part of customary banking,
10 brokerage, dealing, association, or cooperative bank activi-
11 ties, or any common carrier, as defined in section 3 of
12 the Communications Act of 1934, subject to the jurisdic-
13 tion of the Federal Communications Commission or a
14 State commission, as defined in section 3 of that Act, un-
15 less the Commission determines that such carrier is en-
16 gaged in the business of collecting, processing, or pre-
17 paring for distribution or publication, information with re-
18 spect to transactions in or quotations involving the pur-
19 chase or sale of electric power, natural gas, the trans-
20 mission of electric energy, or the transportation of natural
21 gas.

22 (b) PROHIBITION.—No electric power or natural gas
23 information processor may make use of the mails or any
24 means or instrumentality of interstate commerce—

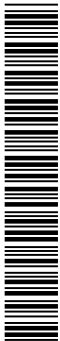


1 (1) to collect, process, distribute, publish, or
2 prepare for distribution or publication any informa-
3 tion with respect to quotations for, or transactions
4 involving the purchase or sale of electric power, nat-
5 ural gas, the transmission of electric energy, or the
6 transportation of natural gas, or

7 (2) to assist, participate in, or coordinate the
8 distribution or publication of such information in
9 contravention of such rules and regulations as the
10 Federal Energy Regulatory Commission shall pre-
11 scribe as necessary or appropriate in the public in-
12 terest to

13 (A) prevent the use, distribution, or publi-
14 cation of fraudulent, deceptive, or manipulative
15 information with respect to quotations for and
16 transactions involving the purchase or sale of
17 electric power, natural gas, the transmission of
18 electric energy, or the transportation of natural
19 gas;

20 (B) assure the prompt, accurate, reliable,
21 and fair collection, processing, distribution, and
22 publication of information with respect to
23 quotations for and transactions involving the
24 purchase or sale of electric power, natural gas,
25 the transmission of electric energy, or the



1 transportation of natural gas, and the fairness
2 and usefulness of the form and content of such
3 information;

4 (C) assure that all such information proc-
5 essors may, for purposes of distribution and
6 publication, obtain on fair and reasonable terms
7 such information with respect to quotations for
8 and transactions involving the purchase or sale
9 of electric power, natural gas, the transmission
10 of electric energy, or the transportation of nat-
11 ural gas as is collected, processed, or prepared
12 for distribution or publication by any exclusive
13 processor of such information acting in such ca-
14 pacity;

15 (D) assure that, subject to such limitations
16 as the Commission, by rule, may impose as nec-
17 essary or appropriate for the maintenance of
18 fair and orderly markets, all persons may ob-
19 tain on terms which are not unreasonably dis-
20 criminatory such information with respect to
21 quotations for and transactions involving the
22 purchase or sale of electric power, natural gas,
23 the transmission of electric energy, or the
24 transportation of natural gas as is published or



1 distributed by any electric power or natural gas
2 information processor;

3 (E) assure that all electricity and natural
4 gas electronic communication networks transmit
5 and direct orders for the purchase and sale of
6 electricity or natural gas in a manner consistent
7 with the establishment and operation of an effi-
8 cient, fair, and orderly market system for elec-
9 tricity and natural gas; and

10 (F) assure equal regulation of all markets
11 involving the purchase or sale of electric power,
12 natural gas, the transmission of electric energy,
13 or the transportation of natural gas and all per-
14 sons effecting transactions involving the pur-
15 chase or sale of electric power, natural gas, the
16 transmission of electric energy, or the transpor-
17 tation of natural gas.

18 (c) RELATED COMMODITIES.—For purposes of this
19 section, the phrase “purchase or sale of electric power,
20 natural gas, the transmission of electric energy, or the
21 transportation of natural gas” includes the purchase or
22 sale of any commodity (as defined in the Commodities Ex-
23 change Act) relating to any such purchase or sale if such
24 commodity is excluded from regulation under the Com-
25 modities Exchange Act pursuant to section 2 of that Act.



1 (d) PROHIBITION.—No person who owns, controls, or
2 is under the control or ownership of a public utility, a nat-
3 ural gas company, or a public utility holding company may
4 own, control, or operate any electronic computer network
5 or other multilateral trading facility utilized to trade elec-
6 tricity or natural gas.

7 **SEC. 1287. PENALTIES.**

8 (a) CRIMINAL PENALTIES.—Section 316 of the Fed-
9 eral Power Act (16 U.S.C. 825o(c)) is amended as follows:

10 (1) By striking “\$5,000” in subsection (a) and
11 inserting “\$5,000,000 for an individual and
12 \$25,000,000 for any other defendant” and by strik-
13 ing out “two years” and inserting “five years” .

14 (2) By striking “\$500” in subsection (b) and
15 inserting “\$1,000,000”.

16 (3) By striking subsection (c).

17 (b) CIVIL PENALTIES.—Section 316A of the Federal
18 Power Act (16 U.S.C. 825o091) is amended as follows:

19 (1) By striking “section 211, 212, 213, or 214”
20 each place it appears and inserting “Part II”.

21 (2) By striking “\$10,000 for each day that
22 such violation continues” and inserting “the greater
23 of \$1,000,000 or three times the profit made or gain
24 or loss avoided by reason of such violation”.

25 (3) By adding the following at the end thereof:



1 “(c) AUTHORITY OF A COURT TO PROHIBIT PERSONS
2 FROM CERTAIN ACTIVITIES.—In any proceeding under
3 this section, the court may censure, place limitations on
4 the activities, functions, or operations of, suspend or re-
5 voke the ability of any entity (without regard to section
6 201(f)) to participate in the transmission of electric en-
7 ergy in interstate commerce or the sale of electric energy
8 at wholesale in interstate commerce if it finds that such
9 censure, placing of limitations, suspension, or revocation
10 is in the public interest and that one or more of the fol-
11 lowing applies to such entity:

12 “(1) Such entity has willfully made or caused to
13 be made in any application or report required to be
14 filed with the Commission or with any other appro-
15 priate regulatory agency, or in any proceeding before
16 the Commission, any statement which was at the
17 time and in the light of the circumstances under
18 which it was made false or misleading with respect
19 to any material fact, or has omitted to state in any
20 such application or report any material fact which is
21 required to be stated therein.

22 “(2) Such entity has been convicted of any fel-
23 ony or misdemeanor or of a substantially equivalent
24 crime by a foreign court of competent jurisdiction
25 which the court finds—



1 “(A) involves the purchase or sale of elec-
2 tricity, the taking of a false oath, the making
3 of a false report, bribery, perjury, burglary, any
4 substantially equivalent activity however de-
5 nominated by the laws of the relevant foreign
6 government, or conspiracy to commit any such
7 offense;

8 “(B) arises out of the conduct of the busi-
9 ness of transmitting electric energy in interstate
10 commerce or selling or purchasing electric en-
11 ergy at wholesale in interstate commerce;

12 “(C) involves the larceny, theft, robbery,
13 extortion, forgery, counterfeiting, fraudulent
14 concealment, embezzlement, fraudulent conver-
15 sion, or misappropriation of funds, or securities,
16 or substantially equivalent activity however de-
17 nominated by the laws of the relevant foreign
18 government; or

19 “(D) involves the violation of section 152,
20 1341, 1342, or 1343 or chapter 25 or 47 of
21 title 18, United States Code, or a violation of
22 a substantially equivalent foreign statute.

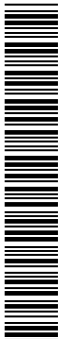
23 “(3) Such entity is permanently or temporarily
24 enjoined by order, judgment, or decree of any court
25 of competent jurisdiction from acting as an invest-



1 ment adviser, underwriter, broker, dealer, municipal
2 securities dealer, government securities broker, gov-
3 ernment securities dealer, transfer agent, foreign
4 person performing a function substantially equiva-
5 lent to any of the above, or entity or person required
6 to be registered under the Commodity Exchange Act
7 or any substantially equivalent foreign statute or
8 regulation, or as an affiliated person or employee of
9 any investment company, bank, insurance company,
10 foreign entity substantially equivalent to any of the
11 above, or entity or person required to be registered
12 under the Commodity Exchange Act or any substan-
13 tially equivalent foreign statute or regulation, or
14 from engaging in or continuing any conduct or prac-
15 tice in connection with any such activity, or in con-
16 nection with the purchase or sale of any security.

17 “(4) Such entity has willfully violated any pro-
18 vision of this Act.

19 “(5) Such entity has willfully aided, abetted,
20 counseled, commanded, induced, or procured the vio-
21 lation by any other person of any provision of this
22 Act, or has failed reasonably to supervise, with a
23 view to preventing violations of the provisions of this
24 Act, another person who commits such a violation,
25 if such other person is subject to his supervision.



1 For the purposes of this paragraph no person shall
2 be deemed to have failed reasonably to supervise any
3 other person, if—

4 “(A) there have been established proce-
5 dures, and a system for applying such proce-
6 dures, which would reasonably be expected to
7 prevent and detect, insofar as practicable, any
8 such violation by such other person, and

9 “(B) such person has reasonably dis-
10 charged the duties and obligations incumbent
11 upon him by reason of such procedures and sys-
12 tem without reasonable cause to believe that
13 such procedures and system were not being
14 complied with.

15 “(6) Such entity has been found by a foreign fi-
16 nancial or energy regulatory authority to have—

17 “(A) made or caused to be made in any
18 application or report required to be filed with a
19 foreign regulatory authority, or in any pro-
20 ceeding before a foreign financial or energy reg-
21 ulatory authority, any statement that was at
22 the time and in the light of the circumstances
23 under which it was made false or misleading
24 with respect to any material fact, or has omit-
25 ted to state in any application or report to the



1 foreign regulatory authority any material fact
2 that is required to be stated therein;

3 “(B) violated any foreign statute or regula-
4 tion regarding the transmission or sale of elec-
5 tricity or natural gas;

6 “(C) aided, abetted, counseled, com-
7 manded, induced, or procured the violation by
8 any person of any provision of any statutory
9 provisions enacted by a foreign government, or
10 rules or regulations thereunder, empowering a
11 foreign regulatory authority regarding trans-
12 actions in electricity or natural gas, or con-
13 tracts of sale of electricity or natural gas, trad-
14 ed on or subject to the rules of a contract mar-
15 ket or any board of trade, or has been found,
16 by a foreign regulatory authority, to have failed
17 reasonably to supervise, with a view to preventing
18 violations of such statutory provisions, rules, and
19 regulations, another person who commits such a vio-
20 lation, if such other person is subject to his super-
21 vision.

22 “(7) Such entity is subject to any final order of
23 a State commission (or any agency or officer per-
24 forming like functions), State authority that super-
25 vises or examines banks, savings associations, or



1 credit unions, State insurance commission (or any
2 agency or office performing like functions), an ap-
3 propriate Federal banking agency (as defined in sec-
4 tion 3 of the Federal Deposit Insurance Act (12
5 U.S.C. 1813(q))), or the National Credit Union Ad-
6 ministration, that—

7 “(A) bars such person from association
8 with an entity regulated by such commission,
9 authority, agency, or officer, or from engaging
10 in the business of securities, insurance, bank-
11 ing, savings association activities, or credit
12 union activities; or

13 “(B) constitutes a final order based on vio-
14 lations of any laws or regulations that prohibit
15 fraudulent, manipulative, or deceptive conduct.”

16 (4) Such entity is subject to statutory disquali-
17 fication within the meaning of section 3(a)(39) of
18 the Securities Exchange Act of 1934.”

19 (c) NATURAL GAS ACT PENALTIES.—Section 21 of
20 the Natural Gas Act is amended by adding the following
21 new subsection at the end thereof:

22 “(c) AUTHORITY OF A COURT TO PROHIBIT PERSONS
23 FROM CERTAIN ACTIVITIES.—In any proceeding under
24 this section, the court may censure, place limitations on
25 the activities, functions, or operations of, suspend or re-



1 voke the ability of any entity (without regard to section
2 201(f)) to participate in the transportation of natural gas
3 in interstate commerce, or the sale in interstate commerce
4 of natural gas for resale for ultimate public consumption
5 for domestic, commercial, industrial, or any other use if
6 it finds that such censure, placing of limitations, suspen-
7 sion, or revocation is in the public interest and that one
8 or more of the following applies to such entity:

9 “(1) Such entity has willfully made or caused to
10 be made in any application or report required to be
11 filed with the Commission or with any other appro-
12 priate regulatory agency, or in any proceeding before
13 the Commission, any statement which was at the
14 time and in the light of the circumstances under
15 which it was made false or misleading with respect
16 to any material fact, or has omitted to state in any
17 such application or report any material fact which is
18 required to be stated therein.

19 “(2) Such entity has been convicted of any fel-
20 ony or misdemeanor or of a substantially equivalent
21 crime by a foreign court of competent jurisdiction
22 which the court finds—

23 “(A) involves the purchase or sale of nat-
24 ural gas, the taking of a false oath, the making
25 of a false report, bribery, perjury, burglary, any



1 substantially equivalent activity however de-
2 nominated by the laws of the relevant foreign
3 government, or conspiracy to commit any such
4 offense;

5 “(B) arises out of the conduct of the busi-
6 ness of transmitting natural gas in interstate
7 commerce, or the selling in interstate commerce
8 of natural gas for resale for ultimate public
9 consumption for domestic, commercial, indus-
10 trial, or any other use;

11 “(C) involves the larceny, theft, robbery,
12 extortion, forgery, counterfeiting, fraudulent
13 concealment, embezzlement, fraudulent conver-
14 sion, or misappropriation of funds, or securities,
15 or substantially equivalent activity however de-
16 nominated by the laws of the relevant foreign
17 government; or

18 “(D) involves the violation of section 152,
19 1341, 1342, or 1343 or chapter 25 or 47 of
20 title 18, United States Code, or a violation of
21 a substantially equivalent foreign statute.

22 “(3) Such entity is permanently or temporarily
23 enjoined by order, judgment, or decree of any court
24 of competent jurisdiction from acting as an invest-
25 ment adviser, underwriter, broker, dealer, municipal



1 securities dealer, government securities broker, gov-
2 ernment securities dealer, transfer agent, foreign
3 person performing a function substantially equiva-
4 lent to any of the above, or entity or person required
5 to be registered under the Commodity Exchange Act
6 or any substantially equivalent foreign statute or
7 regulation, or as an affiliated person or employee of
8 any investment company, bank, insurance company,
9 foreign entity substantially equivalent to any of the
10 above, or entity or person required to be registered
11 under the Commodity Exchange Act or any substan-
12 tially equivalent foreign statute or regulation, or
13 from engaging in or continuing any conduct or prac-
14 tice in connection with any such activity, or in con-
15 nection with the purchase or sale of any security.

16 “(4) Such entity has willfully violated any pro-
17 vision of this Act.

18 “(5) Such entity has willfully aided, abetted,
19 counseled, commanded, induced, or procured the vio-
20 lation by any other person of any provision of this
21 Act, or has failed reasonably to supervise, with a
22 view to preventing violations of the provisions of this
23 Act, another person who commits such a violation,
24 if such other person is subject to his supervision.
25 For the purposes of this paragraph no person shall



1 be deemed to have failed reasonably to supervise any
2 other person, if—

3 “(A) there have been established proce-
4 dures, and a system for applying such proce-
5 dures, which would reasonably be expected to
6 prevent and detect, insofar as practicable, any
7 such violation by such other person, and

8 “(B) such person has reasonably dis-
9 charged the duties and obligations incumbent
10 upon him by reason of such procedures and sys-
11 tem without reasonable cause to believe that
12 such procedures and system were not being
13 complied with.

14 “(6) Such entity has been found by a foreign fi-
15 nancial or energy regulatory authority to have—

16 “(A) made or caused to be made in any
17 application or report required to be filed with a
18 foreign regulatory authority, or in any pro-
19 ceeding before a foreign financial or energy reg-
20 ulatory authority, any statement that was at
21 the time and in the light of the circumstances
22 under which it was made false or misleading
23 with respect to any material fact, or has omit-
24 ted to state in any application or report to the



1 foreign regulatory authority any material fact
2 that is required to be stated therein;

3 “(B) violated any foreign statute or regula-
4 tion regarding the transmission or sale of elec-
5 tricity or natural gas;

6 “(C) aided, abetted, counseled, com-
7 manded, induced, or procured the violation by
8 any person of any provision of any statutory
9 provisions enacted by a foreign government, or
10 rules or regulations thereunder, empowering a
11 foreign regulatory authority regarding trans-
12 actions in electricity or natural gas, or con-
13 tracts of sale of electricity or natural gas, trad-
14 ed on or subject to the rules of a contract mar-
15 ket or any board of trade, or has been found,
16 by a foreign regulatory authority, to have failed
17 reasonably to supervise, with a view to pre-
18 venting violations of such statutory provisions,
19 rules, and regulations, another person who com-
20 mits such a violation, if such other person is
21 subject to his supervision.

22 “(7) Such entity is subject to any final order of
23 a State commission (or any agency or officer per-
24 forming like functions), State authority that super-
25 vises or examines banks, savings associations, or



1 credit unions, State insurance commission (or any
2 agency or office performing like functions), an ap-
3 propriate Federal banking agency (as defined in sec-
4 tion 3 of the Federal Deposit Insurance Act (12
5 U.S.C. 1813(q))), or the National Credit Union Ad-
6 ministration, that—

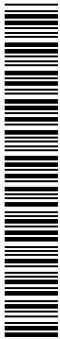
7 “(A) bars such person from association
8 with an entity regulated by such commission,
9 authority, agency, or officer, or from engaging
10 in the business of securities, insurance, bank-
11 ing, savings association activities, or credit
12 union activities; or

13 “(B) constitutes a final order based on vio-
14 lations of any laws or regulations that prohibit
15 fraudulent, manipulative, or deceptive conduct.

16 “(8) Such entity is subject to statutory dis-
17 qualification within the meaning of section 3(a)(39)
18 of the Securities Exchange Act of 1934.”.

19 **SEC. 1288. REVIEW OF PUHCA EXEMPTIONS.**

20 Not later than 12 months after the enactment of this
21 Act the Securities and Exchange Commission shall review
22 each exemption granted to any person under section 3(a)
23 of the Public Utility Holding Company Act of 1935 and
24 shall review the action of persons operating pursuant to
25 a claim of exempt status under section 3 to determine if



1 such exemptions and claims are consistent with the re-
2 quirements of such section 3(a) and whether or not such
3 exemptions or claims of exemption should continue in
4 force and effect.

5 **SEC. 1289. REVIEW OF ACCOUNTING FOR CONTRACTS IN-**
6 **VOLVED IN ENERGY TRADING.**

7 Not later than 12 months after the enactment of this
8 Act, the Comptroller General of the United States shall
9 submit to the Congress a report of the results of its review
10 of accounting for contracts in energy trading and risk
11 management activities. The review and report shall in-
12 clude, among other issues, the use of mark-to-market ac-
13 counting and when gains and losses should be recognized,
14 with a view toward improving the transparency of energy
15 trading activities for the benefit of investors, consumers,
16 and the integrity of these markets.

17 **SEC. 1290. PROTECTION OF FERC REGULATED SUBSIDI-**
18 **ARIES.**

19 Section 205 of the Federal Power Act is amended by
20 adding after subsection (f) the following new subsection:

21 “(g) RULES AND PROCEDURES TO PROTECT CON-
22 SUMERS OF PUBLIC UTILITIES.—Not later than 9 months
23 after the date of enactment of this Act, the Commission
24 shall adopt rules and procedures for the protection of elec-
25 tric consumers from self-dealing, interaffiliate abuse, and



1 other harmful actions taken by persons owning or control-
2 ling public utilities. Such rules shall ensure that no asset
3 of a public utility company shall be used as collateral for
4 indebtedness incurred by the holding company of, and any
5 affiliate of, such public utility company, and no public util-
6 ity shall acquire or own any securities of the holding com-
7 pany or other affiliates of the holding company unless the
8 Commission has determined that such acquisition or own-
9 ership is consistent with the public interest and the protec-
10 tion of consumers of such public utility.”.

11 **SEC. 1291. REFUNDS UNDER THE FEDERAL POWER ACT.**

12 Section 206(b) of the Federal Power Act is amended
13 as follows:

14 (1) By amending the first sentence to read as
15 follows: “In any proceeding under this section, the
16 refund effective date shall be the date of the filing
17 of a complaint or the date of the Commission motion
18 initiating the proceeding, except that in the case of
19 a complaint with regard to market-based rates, the
20 Commission may establish an earlier refund effective
21 date.”.

22 (2) By striking the second and third sentences.

23 (3) By striking out “the refund effective date or
24 by” and “, whichever is earlier,” in the fifth sen-
25 tence.



1 (4) In the seventh sentence by striking
2 “through a date fifteen months after such refund ef-
3 fective date” and insert “and prior to the conclusion
4 of the proceeding” and by striking the proviso.

5 **SEC. 1292. ACCOUNTS AND REPORTS.**

6 Section 318 of the Federal Power Act is amended by
7 adding the following at the end thereof: “This section shall
8 not apply to sections 301 and 304 of this Act.”.

9 **SEC. 1293. MARKET-BASED RATES.**

10 Section 205 of the Federal Power Act is amended by
11 adding the following new subsection at the end thereof:

12 “(g) For each public utility granted the authority by
13 the Commission to sell electric energy at market-based
14 rates, the Commission shall review the activities and char-
15 acteristics of such utility not less frequently than annually
16 to determine whether such rates are just and reasonable.
17 Each such utility shall notify the Commission promptly
18 of any change in the activities and characteristics relied
19 upon by the Commission in granting such public utility
20 the authority to sell electric energy at market-based rates.
21 If the Commission finds that:

22 “(1) a rate charged by a public utility author-
23 ized to sell electric energy at market-based rates is
24 unjust, unreasonable, unduly discriminatory or pref-
25 erential,



1 “(2) the public utility has intentionally engaged
2 in an activity that violates any other rule, tariff, or
3 order of the Commission, or

4 “(3) any violation of section 101 of the Energy
5 Markets Fraud Prevention and Consumer Protection
6 Act of 2002,

7 the Commission shall issue an order immediately modi-
8 fying or revoking the authority of that public utility to
9 sell electric energy at market-based rates.”.

10 **SEC. 1294. ENFORCEMENT.**

11 (a) COMPLAINTS.—Section 306 of the Federal Power
12 Act (16 U.S.C. 825e) is amended as follows:

13 (1) By inserting “electric utility,” after “Any
14 person,”.

15 (2) By inserting “, transmitting utility,” after
16 “licensee” each place it appears.

17 (b) REVIEW OF COMMISSION ORDERS.—Section
18 313(a) of the Federal Power Act (16 U.S.C. 8251) is
19 amended by inserting “electric utility,” after “person,” in
20 the first 2 places it appears and by striking “any person
21 unless such person” and inserting “any entity unless such
22 entity”.

23 (c) INVESTIGATIONS.—Section 307(a) of the Federal
24 Power Act (16 U.S.C. 825f(a)) is amended as follows:



1 (1) By inserting “, electric utility, transmitting
2 utility, or other entity” after “person” each time it
3 appears.

4 (2) By striking the period at the end of the
5 first sentence and inserting the following: “or in ob-
6 taining information about the sale of electric energy
7 at wholesale in interstate commerce and the trans-
8 mission of electric energy in interstate commerce.”.

9 **SEC. 1295. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
10 **TICES.**

11 (a) **PRIVACY.**—The Federal Trade Commission may
12 issue rules protecting the privacy of electric consumers
13 from the disclosure of consumer information obtained in
14 connection with the sale or delivery of electric energy to
15 electric consumers.

16 (b) **SLAMMING.**—The Federal Trade Commission
17 may issue rules prohibiting the change of selection of an
18 electric utility except with the informed consent of the
19 electric consumer or if approved by the appropriate State
20 regulatory authority.

21 (c) **CRAMMING.**—The Federal Trade Commission
22 may issue rules prohibiting the sale of goods and services
23 to an electric consumer unless expressly authorized by law
24 or the electric consumer.



1 (d) RULEMAKING.—The Federal Trade Commission
2 shall proceed in accordance with section 553 of title 5,
3 United States Code, when prescribing a rule under this
4 section.

5 (e) STATE AUTHORITY.—If the Federal Trade Com-
6 mission determines that a State’s regulations provide
7 equivalent or greater protection than the provisions of this
8 section, such State regulations shall apply in that State
9 in lieu of the regulations issued by the Commission under
10 this section.

11 (f) DEFINITIONS.—For purposes of this section:

12 (1) STATE REGULATORY AUTHORITY.—The
13 term “State regulatory authority” has the meaning
14 given that term in section 3(21) of the Federal
15 Power Act (16 U.S.C. 796(21)).

16 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
17 ITY.—The terms “electric consumer” and “electric
18 utility” have the meanings given those terms in sec-
19 tion 3 of the Public Utility Regulatory Policies Act
20 of 1978 (16 U.S.C. 2602).

21 “(d) The Commission shall, by rule or order, require
22 each person or other entity engaged in the transportation
23 of natural gas in interstate commerce, or the sale in inter-
24 state commerce of natural gas for resale for ultimate pub-
25 lic consumption for domestic, commercial, industrial, or



1 any other use, and each broker, dealer, and power mar-
2 keter involved in any such transportation or sale, to main-
3 tain, and periodically submit to the Commission, such
4 records, in electronic form, of each transaction relating to
5 such transmission or sale as may be necessary to deter-
6 mine whether any person has employed any fraudulent,
7 manipulative, or deceptive device or contrivance in con-
8 travention of rules promulgated by the Commission.”.

